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**U.S. District Court  
California Northern District (San Francisco)  
CIVIL DOCKET FOR CASE #: 3:05-cv-02879-PJH**

Northern California River Watch v. Bo Dean Co. Inc.  
Assigned to: Hon. Phyllis J. Hamilton  
Cause: 33:1319 Clean Water Act

Date Filed: 07/14/2005  
Jury Demand: None  
Nature of Suit: 893 Environmental Matters  
Jurisdiction: Federal Question

**Plaintiff**

**Northern California River Watch**  
*a non-profit corporation*

represented by **Kimberly Burr**  
Law Office of Jack Silver  
P.O. Box 5469  
Santa Rosa, CA 95402-5469  
707-528-8175  
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Email: lhm28843@sbcglobal.net  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Jack Silver**  
Law Office of Jack Silver  
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Santa Rosa, CA 95402-5469  
707/528-8175  
Fax: 707/528-8675  
Email: lhm28843@sbcglobal.net  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Bo Dean Co. Inc.**  
*doing business as*  
Blue Rock Quarry  
*doing business as*  
Santa Rosa Hot Plant  
*doing business as*  
Asphalt Products

Date Filed	#	Docket Text
07/28/2005		Summons Issued as to Bo Dean Co. Inc.. (far, Court Staff) (Filed on 7/28/2005) (Entered: 07/29/2005)
07/26/2005	4	CERTIFICATE OF SERVICE by Northern California River Watch of Complaint on federal EPA and federal Attorney General (Silver, Jack) (Filed on 7/26/2005) (Entered: 07/26/2005)

07/26/2005	<u>3</u>	CONSENT to Proceed Before a US Magistrate Judge by Northern California River Watch.. (Silver, Jack) (Filed on 7/26/2005) (Entered: 07/26/2005)
07/14/2005	<u>2</u>	ADR SCHEDULING ORDER: Case Management Statement due by 11/3/2005. Case Management Conference set for 11/10/2005 02:30 PM. (Attachments: # <u>1</u> # <u>2</u> )(far, Court Staff) (Filed on 7/14/2005) (Entered: 07/15/2005)
07/14/2005		CASE DESIGNATED for Electronic Filing. (far, Court Staff) (Filed on 7/14/2005) (Entered: 07/15/2005)
07/14/2005	<u>1</u>	COMPLAINT for Injunctive Relief, Civil Penalties, Restitution and Remediation (Environmental-Clean Water Act 33 U.S.C. Section 1251 et seq.) against Bo Dean Co. Inc. ( Filing fee \$ 250, receipt number 3374456.). Filed byNorthern California River Watch. (far, Court Staff) (Filed on 7/14/2005) Additional attachment(s) added on 7/26/2005 (far, Court Staff). (Entered: 07/15/2005)

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<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	3:05-cv-02879-PJH
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.08

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ENVIRONMENT & NATURAL  
RESOURCES DIVISION  
APPELLATE SECTION

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DISTRICT COURT  
SANTA ROSA, CALIFORNIA

ENRD

1 Jack Silver, Esq., SBN#160575  
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6 Attorneys for Plaintiff  
NORTHERN CALIFORNIA RIVER WATCH  
7

8  
9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 C 05 28797 PJH

12 NORTHERN CALIFORNIA RIVER  
WATCH, a non-profit corporation,

CASE NO.

13 Plaintiff,

COMPLAINT FOR INJUNCTIVE  
RELIEF, CIVIL PENALTIES,  
RESTITUTION AND REMEDIATION  
(Environmental -  
Clean Water Act -33 U.S.C. §1251 et seq.)

14 v.

15 BO DEAN CO. INC.; BO DEAN CO., INC.,  
dba BLUE ROCK QUARRY, SANTA ROSA  
16 HOT PLANT and ASPHALT AND  
ASPHALT PRODUCTS; DOES 1-20,  
17 INCLUSIVE.

18 Defendants.  
19

20 COMES NOW plaintiff, NORTHERN CALIFORNIA RIVER WATCH (hereafter,  
21 "RIVER WATCH") by and through its attorneys, and for its Complaint against defendants, BO  
22 DEAN CO. INC., BO DEAN CO., INC. dba BLUE ROCK QUARRY, SANTA ROSA HOT  
23 PLANT and ASPHALT AND ASPHALT PRODUCTS and DOES 1-20, INCLUSIVE  
24 (hereafter collectively, "BO DEAN") hereby states as follows:

25 NATURE OF THE CASE

26 1. This is a citizens' suit for relief brought by RIVER WATCH under the Federal Water  
27 Pollution Control Act also known as the Clean Water Act (hereafter, "CWA"), 33 U.S.C. §  
28 1251 et seq., specifically 33 U.S.C. § 1365, CWA § 505, and 33 U.S.C. § 1311, CWA § 301,

1 to stop BO DEAN from repeated and ongoing violations of the CWA. These violations are  
2 detailed in the March 30, 2005 Notice of Violations and Intent to File Suit (hereafter,  
3 "NOTICE") made part of the pleadings of this case as Exhibit A to this Complaint and fully  
4 incorporated herein.

5 2. BO DEAN is routinely violating the requirements of the CWA by discharging pollutants  
6 into the waters of the United States in violation of the procedural requirements of National  
7 Pollutant Discharge Elimination System (hereafter, "NPDES") General Permit No. CAS000001  
8 [State Water Resources Control Board] Water Quality Order No. 97-03-DWQ and Water  
9 Quality Order No.91-13-DWQ (as amended by Water Quality Order 92-12-DWQ) issued  
10 pursuant to 33 U.S.C. § 1342(p) CWA § 402(p) (hereafter, "General Permit"). In addition, BO  
11 DEAN is violating the requirements of the Clean Water Act § 505(a)(1), 33 U.S.C. §  
12 1365(a)(1), the Code of Federal Regulations, and the Basin Plan, by illegally discharging non-  
13 stormwater into waters of the United States without an NPDES permit for non-storm water  
14 discharges.

15 3. RIVER WATCH seeks declaratory relief, injunctive relief to prohibit future violations,  
16 the imposition of civil penalties, and other relief for BO DEAN's violations of the terms of its  
17 PERMIT and its violations of the CWA.

18 4. Under 33 U.S.C § 1251(e), CWA § 101, Congress declared its goals and policy with  
19 regard to public participation in the enforcement of the CWA. 33 U.S.C. §1251(e) provides,  
20 in pertinent part:

21 *Public participation in the development, revision, and enforcement of any*  
22 *regulation, standard, effluent limitation, plan or program established by*  
23 *the Administrator or any State under this chapter shall be provided for,*  
24 *encouraged, and assisted by the Administrator and the States.*

25 5. BO DEAN has illegal discharged and continues to illegally discharge wastewater to  
26 Santa Rosa Creek, Green Valley Creek, and the Russian River or tributaries of these waters  
27 which are habitat for threatened and endangered species as that term is defined by the California  
28 Environmental Protection Agency and United States Environmental Protection Agency.

**PARTIES**

6. RIVER WATCH, is a 501(c)(3) non-profit public benefit corporation duly organized under the laws of the State of California, with headquarters located at 6741 Sebastopol Avenue, Suite 140, Sebastopol, CA 95472. RIVER WATCH is dedicated to protecting, enhancing, and restoring the surface and subsurface waters of Northern California. Many of RIVER WATCH's members live, recreate, and/or work in the watersheds where BO DEAN's discharges occur.

7. RIVER WATCH's members have interests which are or may be adversely effected by BO DEAN's violations as described in this Complaint and attached NOTICE. Said members use the above described water bodies, their tributaries, and effected watershed areas for domestic recreation, drinking water, sports, fishing, swimming, hiking, photography, nature walks and the like. Furthermore, the relief sought herein will redress the injury in fact, likelihood of future injury and interference with the interests of said members.

8. Defendants BO DEAN CO. INC. and BO DEAN CO., INC., dba BLUE ROCK QUARRY, SANTA ROSA HOT PLANT and ASPHALT AND ASPHALT PRODUCTS are California businesses engaged in the extraction of rock for sale, for stockpiling materials used in the manufacture of cement and asphalt, and the manufacture of asphalt and concrete. Its administrative offices are located at 7860 Highway 116, Forestville, CA 95436 and 1060 Maxwell Drive, Santa Rosa, CA 95401.

9. Defendants DOES 1 - 20, INCLUSIVE, respectively, are persons, partnerships, corporations and entities, who are, or were, responsible for, or in some way contributed to, the violations which are the subject of this Complaint and NOTICE or are, or were, responsible for the maintenance, supervision, management, operations, or insurance coverage of BO DEAN. The names, identities, capacities, and functions of Defendants DOES 1 - 20, INCLUSIVE are presently unknown to RIVER WATCH, which shall seek leave of court to amend this Complaint to insert the true names of said DOE defendants when the same have been ascertained

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## JURISDICTIONAL ALLEGATIONS

10. Subject matter jurisdiction is conferred upon this Court by 33 U.S.C. § 1365(a)(1), CWA § 505(a)(1), which states in part that, “any citizen may commence a civil action on his own behalf against any person . . . who is alleged to be in violation of (A) an effluent standard or limitation . . . or (B) an order issued by the Administrator or a State with respect to such a standard or limitation.” For purposes of CWA § 505 discharging without a permit is considered a violation of an effluent standard. For purposes of Section 505, “the term ‘citizen’ means a person or persons having an interest which is or may be adversely affected.”

11. Members and supporters of RIVER WATCH reside in the vicinity of, derive livelihoods from, own property near, and/or recreate on, in or near and/or otherwise use, enjoy and benefit from the above described waterbodies, their tributaries, wetlands, hydrologically connected water bodies and associated natural resources into which BO DEAN discharges pollution, or by which BO DEAN’s operations adversely affect those members’ interests, in violation of the CWA. The health, economic, recreational, aesthetic and environmental interests of RIVER WATCH and its members may be, have been, are being, and will continue to be adversely affected by BO DEAN’s unlawful violations of the CWA. RIVER WATCH contends there exists an injury in fact to its members, causation of that injury by the conduct of BO DEAN complained of herein, and a likelihood that the requested relief will redress that injury.

12. Pursuant to 33 U.S.C. § 1365(b)(1)(A), CWA § 505(b)(1)(A), RIVER WATCH gave notice of the violations alleged in this Complaint more than sixty (60) days prior to commencement of this lawsuit, to: (a) BO DEAN CO. INC., BO DEAN CO., INC., dba BLUE ROCK QUARRY, SANTA ROSA HOT PLANT and ASPHALT AND ASPHALT PRODUCTS, (b) the United States Environmental Protection Agency (both Federal and local), and (c) the State of California Water Resources Control Board. ( See Exhibit A)

13. Pursuant to 33 USC § 1319(g)(6)(B), CWA § 309(g)(6)(B), this lawsuit has been filed within one hundred twenty (120) days of the date notice was given.

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1 14. Pursuant to 33 U.S.C. § 1365(c)(1), CWA § 505(c) (1), venue lies in this District as the  
2 operations and facilities of BO DEAN which are the sources of the violations complained of in  
3 this Complaint are located within this District.

#### 4 GENERAL ALLEGATIONS

5 15. RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs  
6 1 through 14 as though fully set forth herein including all allegations in the NOTICE attached  
7 hereto and incorporated herein by reference.

8 16. All illegal discharges and activities complained of herein occur in wetlands, Santa Rosa  
9 Creek, Laguna de Santa Rosa, Green Valley Creek, the Russian River, and their tributaries,  
10 wetlands, and/or hydrologically connected water bodies, all of which are waters of the United  
11 States.

12 17. The Regional Water Quality Control Board (hereafter, "RWQCB") has determined that  
13 the above described watershed areas and effected waterways are beneficially used for drinking  
14 water, water contact recreation, non-contact water recreation, fresh water habitat, wildlife  
15 habitat, preservation of rare and endangered species, fish migration, fish spawning, industrial  
16 service supply, navigation, and sport fishing.

17 18. BO DEAN owns and/or operates gravel mining, distribution, cement manufacturing,  
18 asphalt manufacturing, and retail operation facilities (hereafter, "FACILITIES") located in  
19 Sonoma County, California. The operations are commercial businesses mining and selling rock  
20 products including gravel, asphalt, and cement to developers, builders, and individuals. BO  
21 DEAN has discharged and continues to discharge storm water and non-storm water from its  
22 FACILITIES both directly and indirectly into the waterways referenced above.

23 19. Beneficial uses of most portions of the specified waterways are being effected in a  
24 prohibitive manner by the illegal discharges and activities of BO DEAN. Also, pursuant to 33  
25 U.S.C. § 1311, CWA § 304, the Environmental Protection Agency and the State of California  
26 have identified BO DEAN's FACILITIES as point sources, the discharges from which  
27 contribute to violations of applicable water quality standards. The violations herein described  
28 and alleged are continuing.

## STATUTORY AND REGULATORY BACKGROUND

20. RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs 1 through 19 as though fully set forth herein including all allegations in the NOTICE attached hereto and incorporated herein by reference.

21. 33 U.S.C. §§ 1311(a) and (b), CWA §§ 301(a) and (b) prohibit the discharge of pollutants from a "point source" into the navigable waters of the United States, unless such discharge is in compliance with applicable effluent limitations as set by the Environmental Protection Agency and the applicable State agencies. BO DEAN's FACILITIES are point sources for storm water and non-storm water discharges under the CWA. The effluent limits would normally be incorporated into a NPDES permit for that point source specifically. Pursuant to 33 U.S.C. § 1311(a), CWA § 301(a), the Environmental Protection Agency and the State of California have formally concluded that discharges by BO DEAN of the type complained of in the NOTICE, are prohibited by law. Additional sets of regulations are set forth in the Basin Plan, California Toxics Rule, the Code of Federal Regulations and other regulations promulgated by the Environmental Protection Agency and the State Water Resources Control Board. 33 U.S.C. § 1311, CWA § 301(a) prohibits discharges of pollutants or activities not authorized by, or in violation of an effluent standard or limitation or an order issued by the Environmental Protection Agency or a State with respect to such a standard or limitation including a NPDES permit issued pursuant to 33 U.S.C. § 1342, CWA § 402. CWA § 306, 33 U.S.C. § 1316, specifically identifies cement manufacturing and Asphalt Paving Mixtures & Blocks as point source activities with specific effluent limitations.

22. The effected waterways detailed in this Complaint and NOTICE are navigable waters of the United States within the meaning of 33 U.S.C. § 1362(7), CWA § 502(7).

23. The Administrator of the Environmental Protection Agency has authorized the RWQCB to issue NPDES permits, subject to specified conditions and requirements, pursuant to 33 U. S.C. § 1342, CWA § 402.

24. The RWQCB has not adopted a NPDES permit prescribing effluent limitations for BO DEAN's cement manufacturing or asphalt paving FACILITIES with regard to direct discharges



1 to wetlands, Santa Rosa Creek, Laguna de Santa Rosa, Green Valley Creek and the Russian  
2 River or tributaries, wetlands and hydrologically connected waterbodies (hereafter, "effected  
3 waterbodies"). BO DEAN has filed an application with the RWQCB to be covered by  
4 California's General Permit pursuant to 33 U.S.C. § 1342(p), CWA § 402(p) for its  
5 FACILITIES as described in the NOTICE.

6 25. A NPDES permit prescribes conditions to ensure compliance with the CWA. It requires  
7 the discharger to establish and maintain records, to install, use and maintain monitoring  
8 equipment, to install and use best available technologies to reduce and eliminate discharges, to  
9 regularly monitor and sample pollutants in its discharges, and to report in specified ways on a  
10 regular basis to the RWQCB regarding discharge of pollutants from a facility. The reports  
11 include mandatory monthly Self Monitoring Reports (hereafter, "SMRs")

## 12 CLAIMS FOR RELIEF

### 13 I. Non-compliance with CWA including CWA § 402(p) Requiring 14 Industrial Dischargers to Comply with General Storm Water Permit

15 26. RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs  
16 1 through 25 as though fully set forth herein including all allegations in the NOTICE attached  
17 hereto and incorporated herein by reference.

18 27. The General Permit prohibits discharges of storm water contaminated with industrial  
19 pollutants, which are not otherwise regulated by an NPDES permit, to groundwater, storm sewer  
20 systems or waters of the United States.

21 28. BO DEAN has violated and continues to violate the CWA and the General Permit as  
22 evidenced by its discharges of storm water containing pollutants to the effected waterbodies in  
23 violation of the CWA including 33 U.S.C. §1311, CWA § 301(a) and 33 U.S.C. § 1342(p),  
24 CWA § 402(p). The violations of BO DEAN are ongoing and will continue after the filing of  
25 this Complaint.

26 29. RIVER WATCH alleges herein all violations of BO DEAN which may have occurred  
27 or will occur prior to trial, but for which data may not have been available or submitted or  
28 apparent from the face of the reports or data submitted by BO DEAN to the RWQCB or to

1 RIVER WATCH prior to the filing of this Complaint. This complaint includes all of BO  
2 DEAN's State and Federal violations which may occur after the filing of this Complaint up to  
3 the date of trial . Each of BO DEAN's violations are separate violations of the CWA.

4 30. RIVER WATCH avers and believes that without the imposition of appropriate civil  
5 penalties and the issuance of appropriate equitable relief, BO DEAN will continue to violate the  
6 CWA as well as State and Federal standards with respect to the enumerated discharges and  
7 releases. RIVER WATCH avers and believes that the relief requested in this Complaint will  
8 redress the injury to RIVER WATCH and its members, prevent future injury, and protect the  
9 interests of its members which are or may be adversely affected by BO DEAN's violations of  
10 the CWA, as well as other State and Federal standards.

11 **II. Violation of 33 U.S.C. § 1251 et seq., 33 U.S.C. § 1311,**  
12 **CWA § 301, and 33 U.S.C. §1342, CWA §§ 402(a) and (b) –**  
13 **Discharge of Non-Storm Water Pollutants From Point Sources**

14 **Must Be Regulated by NPDES Point Source Permit**

15 31. RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs  
16 1 through 30 as though fully set forth herein including all allegations in the NOTICE attached  
17 hereto and incorporated herein by reference.

18 32. 33 U.S.C. § 1311(a), CWA § 301(a) prohibits the discharge of any pollutant into waters  
19 of the United States, unless such discharge is in compliance with various enumerated sections  
20 of the CWA. 33 U.S.C §1342, CWA §402 regulates industrial discharges.

21 33. BO DEAN has violated and continues to violate the CWA as evidenced by its discharges  
22 of pollutants to the above described effected waterbodies, their tributaries and associated  
23 wetlands without a NPDES permit in violation of 33 U.S.C. §§1342(a) and (b), CWA §§ 402(a)  
24 and (b).

25 34. RIVER WATCH contends the violations of BO DEAN are ongoing and will continue  
26 after the filing of this Complaint. RIVER WATCH alleges herein all violations which may  
27 have occurred or will occur prior to trial, but for which data may not have been available or  
28 submitted or apparent from the face of the reports or data submitted by BO DEAN to the

1 RWQCB or to RIVER WATCH prior to the filing of this Complaint. RIVER WATCH will file  
2 amended complaints if necessary to address BO DEAN's State and Federal violations which  
3 may occur after the filing of this Complaint. Each of BO DEAN's violations are separate  
4 violations of the CWA.

5 35. RIVER WATCH avers and believes that without the imposition of appropriate civil  
6 penalties and the issuance of appropriate equitable relief, BO DEAN will continue to violate the  
7 CWA as well as State and Federal standards with respect to the enumerated discharges and  
8 releases. RIVER WATCH avers and believes that the relief requested in this Complaint will  
9 redress the injury to RIVER WATCH and its members, prevent future injury, and protect the  
10 members' interests which are or may be adversely affected by BO DEAN's violations of the  
11 CWA, as well as other State and Federal standards.

12 **III. Violation of 33 U.S.C. §1251 et seq., 33 U.S.C. 1311,**  
13 **CWA § 301; 33 U.S.C. § 1342, CWA § 402; 40 CFR Subchapter N**  
14 **Parts 411, 436, 440, and 443 -**

15 **Discharges Must Not Exceed Effluent Limitations and Guidelines**

16 36. RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs  
17 1 through 35 as though fully set forth herein including all allegations in the NOTICE attached  
18 hereto and incorporated herein by reference.

19 37. BO DEAN has violated and continues to violate the CWA by failing to ensure that  
20 discharge of pollutants from its FACILITIES do not exceed acceptable established levels for  
21 storm water and non-storm water discharge of pollutants set out in the General Permit and 40  
22 CFR Subchapter N Parts 411, 436, 440, and 443.

23 38. RIVER WATCH alleges herein all violations of BO DEAN which may have occurred  
24 or will occur prior to trial, but for which data may not have been available or submitted or  
25 apparent from the face of the reports or data submitted by BO DEAN to the RWQCB or to  
26 RIVER WATCH prior to the filing of this Complaint. This Complaint includes all BO DEAN's  
27 State and Federal violations which may occur after the filing of this Complaint until judgment.  
28 Each of BO DEAN's violations are separate violations of the CWA.

1 39. RIVER WATCH avers and believes that without the imposition of appropriate civil  
2 penalties and the issuance of appropriate equitable relief, BO DEAN will continue to violate the  
3 CWA as well as State and Federal standards with respect to the enumerated discharges and  
4 releases. RIVER WATCH avers and believes that the relief requested in this Complaint will  
5 redress the injury to RIVER WATCH and its members, prevent future injury, and protect the  
6 members' interests which are or may be adversely affected by BO DEAN's violations of the  
7 CWA, as well as other State and Federal standards.

8 **IV. Best Management Practices Must Be Implemented**  
9 **to Achieve National Standards of Performance**

10 40. RIVER WATCH realleges and incorporates by reference the allegations of Paragraphs  
11 1 through 39 as though fully set forth herein including all allegations in the NOTICE attached  
12 hereto and incorporated herein by reference.

13 41. BO DEAN has violated and continues to violate the CWA by operating and discharging  
14 in a manner which does not reflect the greatest degree of effluent reduction which the  
15 administrator of the Environmental Protection Agency has determined to be "achievable through  
16 application of the best available demonstrated control technology, processes, operating methods,  
17 or other alternatives, including, where practicable, a standard permitting no discharge of  
18 pollutants." 33 U.S.C. §1316, 33 CWA § 306.

19 42. 33 U.S.C. §§ 1311 and 1342, CWA §§ 301 and 402 respectively, require that  
20 dischargers implement Best Management Practices to reduce and eliminate polluted discharges  
21 to waters of the United States.

22 43. RIVER WATCH alleges herein all violations which may have occurred or will occur  
23 prior to trial, but for which data may not have been available or submitted or apparent from the  
24 face of the reports or data submitted by BO DEAN to the RWQCB or to RIVER WATCH prior  
25 to the filing of this Complaint. This Complaint includes all of BO DEAN's State and Federal  
26 violations which may occur after the filing of this Complaint. Each of BO DEAN's violations  
27 are separate violations of the CWA.

28 //

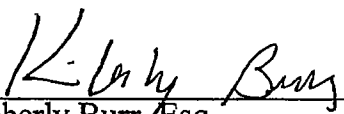
1 44. RIVER WATCH avers and believes that without the imposition of appropriate civil  
2 penalties and the issuance of appropriate equitable relief, BO DEAN will continue to violate the  
3 CWA as well as State and Federal standards with respect to the enumerated discharges and  
4 releases. RIVER WATCH avers and believes that the relief requested in this Complaint will  
5 redress the injury to RIVER WATCH and its members, prevent future injury, and protect the  
6 members' interests which are or may be adversely affected by BO DEAN's violations of the  
7 CWA, as well as other State and Federal standards.

8 **RELIEF REQUESTED**

9 WHEREFORE, RIVER WATCH prays that the Court grant the following relief:

- 10 1. Declare BO DEAN to have violated and to be in violation of the CWA;
- 11 2. Issue an injunction ordering BO DEAN to immediately operate its FACILITIES in  
12 compliance with the CWA and applicable effluent and receiving water limitations of State and  
13 Federal standards, including acquiring the appropriate permits including NPDES permits for  
14 direct discharges of non-storm water from BO DEAN's FACILITIES to the effected  
15 waterbodies and to file a Notice of Intent to be covered by NPDES Permits;
- 16 3. Order BO DEAN to pay civil penalties of \$32,500.00 per violation per day for its  
17 violations of the CWA;
- 18 4. Order BO DEAN to pay RIVER WATCH's reasonable attorneys' fees and costs  
19 (including expert witness fees), as provided by 33 U.S.C. § 1365(d) and applicable California  
20 law; and,
- 21 5. Grant such other and further relief as this court may find just and proper.

22  
23 DATED: July 13, 2005

  
\_\_\_\_\_  
Kimberly Burr, Esq.  
Attorney for plaintiff  
NORTHERN CALIFORNIA RIVER WATCH

## **EXHIBIT A**

# Law Office of Jack Silver

P.O. Box 5469  
Phone 707-528-8175  
warrioreco@yahoo.com

Santa Rosa, California 95402  
Fax 707-542-7139



March 30, 2005

**VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Dean N. Soiland, Owner and President  
Bo Dean Co., Inc.  
d.b.a. Blue Rock Quarry  
7860 Highway 116  
Forestville, CA 95436

Dean N. Soiland, Owner and President  
Bo Dean Co., Inc.  
d.b.a. Santa Rosa Hot Plant  
d.b.a. Asphalt and Asphalt Products  
1060 Maxwell Drive  
Santa Rosa, CA 95401

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Mr. Soiland:

I am writing on behalf of Northern California River Watch ("River Watch") with regard to the discharges of pollutants from Bo Dean Co., Inc. facilities known as Blue Rock Quarry in Forestville (SIC1429-Crushed & Broken Stone, not elsewhere classified) and Asphalt and Asphalt Products in Santa Rosa (SIC2951-Asphalt Paving Mixtures & Blocks) (collectively hereafter, "Bo Dean Co.")<sup>1</sup> into the Russian River, its tributaries and Santa Rosa, Creek, all waters of the United States, in violation of the Clean Water Act.

This letter addresses Bo Dean Co.'s failure to comply with the terms and conditions of California's General Industrial Storm Water Permit for Industrial Storm Water Discharges (WDID 228S003380), its un-permitted discharges of contaminated storm water from its facilities, its discharges of non-storm water pollutants from its facilities in violation of effluent limitations, and its violations of the procedural

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<sup>1</sup> Both the Santa Rosa Asphalt site and Forestville hard rock quarry have filed Notices of Intent to be covered under the General Storm Water permit.

Bo Dean Co., Inc.

Notice of Violations and Intention to File Suite - CWA

Page 2

March 30, 2005

requirements of National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 97-03-DWQ and Water Quality Order No. 91-13-DWQ (as amended by Water Quality Order 92-12-DWQ) issued pursuant to Clean Water Act § 402(p), 33 U.S.C. § 1342(p) ("General Permit").

River Watch also places Bo Dean Co. on notice that following the expiration of sixty (60) days from the date of this NOTICE, River Watch intends to bring suit against Bo Dean Co. in Federal District Court for Bo Dean Co.'s continuing violations of "an effluent standard or limitation," permit condition or requirement and/or "an order issued by the Administrator or a State with respect to such standard or limitation" under Clean Water § 505(a)(1), 33 U.S.C. § 1365(a)(1), the Code of Federal Regulations, and the Basin Plan, as exemplified by Bo Dean Co.'s illegally discharging into waters of the United States without a NPDES permit for point source as opposed to non-point source discharges.

Clean Water Act § 505(b) requires that sixty (60) days prior to the initiation of a civil action under Clean Water Act § 505(a), a citizen must give notice of his/her intent to sue. Notice must be given to the alleged violator, the U.S. Environmental Protection Agency, the State in which the violations occur, and the registered agent of the alleged violator. River Watch believes that this NOTICE provides proper notice of Bo Dean Co.'s violations as required by the Clean Water Act.

## BACKGROUND

Bo Dean Co. operates mining, distribution, production, and retail facilities in Sonoma, County. Photographic evidence demonstrates that highly turbid run off leaves the Bo Dean Co. properties during storm events. In Santa Rosa, the heavily polluted run off<sup>2</sup> from the plant is discharged untreated directly to city streets, storm drains, and Santa Rosa Creek. In Forestville, the discharge enters Green Valley Creek.<sup>3</sup> Green Valley Creek is recognized as one of the last productive coho salmon (listed as threatened with extinction under federal law), spawning tributaries remaining on the Russian River

<sup>2</sup> In February of 2004 pH was 8.7 and 10; In December of 2003 specific conductance was 11 umh/cm; total organic carbon was 19 mg/l. In March of 2005 run off was uncontrolled, highly turbid, and discharged to storm drains.

<sup>3</sup> On February 26, 2004 specific conductance was 740 umhos/cm; In December 2003 it was 1000 and total suspended solids was 360 mg/l. In March of 2005 run off was highly turbid and entered inadequately protected storm drains on site and the road side ditch.



(California Department of Fish and Game 1/3/03). Green Valley Creek is also habitat of Western Pond Turtles, a California species of concern, and fresh water shrimp.

1. Bo Dean Co. operates retail facilities wherein it mines, crushes, and stockpiles materials used in the production of asphalt and many other rock and sand products. Bo Dean Co.'s sites also serve as fueling and truck storage and maintenance facilities.
2. As a result of the enormous amounts of sand, gravel, rock, and asphalt batch plant ingredients it exposes to rainwater without the benefit of adequate or actual storm water management plans, Bo Dean Co.'s facilities discharge and threaten to discharge large amounts of pollutants to surface waters.

The properties and activities of Bo Dean Co. are surrounded by storm drains and biologically sensitive creeks. Santa Rosa Creek is the receiving water for all contaminated run off from the asphalt batch plant site. Storm events saturate that site and easily overwhelm the small box to which a large portion of the site drains. The result is that contaminated run off gushes into the streets, storm drains, and Creek during storm events.

Santa Rosa Creek as well as Green Valley Creek are major water courses in the Russian River watershed. The Russian River and its tributaries are habitat for naturally spawned populations of Coho salmon (*Oncorhynchus kisutch*), Steelhead trout (*Oncorhynchus mykiss*), and Chinook salmon (*Oncorhynchus tshawytscha*) inhabiting the California Coast Province. These salmon and trout have been listed as threatened under the federal Endangered Species Act. Critical habitat has also been designated for these species to include all estuarine and river reaches accessible to salmonids below longstanding, naturally impassable barriers.

## VIOLATIONS

### 1. Discharging in Violation of NPDES Storm Water Permit for Industrial Activity

Bo Dean Co.'s activities at the sites identified above are industrial in nature - gravel mining, gravel processing, asphalt manufacturing and cement manufacturing, and therefore each site requires a NPDES storm water permit. This section of the NOTICE addresses Bo Dean Co.'s failure to comply with the terms and conditions of the General Permit.

Clean Water Act § 402(p)(4)(A) required EPA to establish regulations for permits for discharges of storm water associated with industrial activity. EPA's storm water discharge regulations provide,

"Dischargers of storm water associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a promulgated storm water general permit." 40 C.F.R. § 122.26(c)(1).

The Ninth Circuit has observed that "the language 'discharges associated with industrial activity' is very broad. The operative word is 'associated.' It is not necessary that storm water be contaminated or come into direct contact with pollutants; only association with any type of industrial activity is necessary." Natural Resources Defense Council, Inc. v. EPA, 966 F.2d 1292, 1304 (9th Cir. 1992). Here, Bo Dean Co.'s operations occur in the open air. Storm water, therefore comes into contact with its operations. Because Bo Dean Co. discharges storm water associated with its industrial activities, it was required to obtain a storm water discharge permit by October 1, 1992 and to comply with its terms.

The Clean Water Act prohibits storm water discharges associated with industrial activity without a NPDES permit (Clean Water Act § 402(p); 40 C.F.R. § 122.26). The General Permit prohibits the discharge of material other than storm water to waters of the nation, unless such discharges are regulated under a NPDES permit; and, prohibits the discharge of storm water which causes or threatens to cause pollution, contamination, or nuisance. The General Permit prohibits the discharge of storm water to surface or ground water which adversely impacts human health or the environment.

The General Permit requires storm water dischargers to comply with its terms, including the filing of a Notice of Intent ("NOI") to be covered under the General Permit; the development and implementation of a Storm Water Pollution and Prevention Plan ("SWPPP"); and, the development and implementation of a Monitoring and Reporting Program.

The Bo Dean Co. sites identified in this NOTICE are subject to storm water effluent limitations, new source performance standards, and/or toxic pollutant effluent standards (40 CFR Subchapter N) as well as effluent limitation guidelines specified by 40 CFR Parts 411, 436, 440 and 443. Bo Dean Co. is required to develop Best

Management Practices ("BMP") using Best Available Technology ("BAT") and best conventional technology ("BCT") to control and/or eliminate pollution.

River Watch alleges that Bo Dean Co. has failed to adequately develop or implement SWPPPs, and/or Monitoring Program and Reporting Programs for each of the identified sites.

Bo Dean Co. has failed to perform visual observations of storm water discharges and authorized storm water discharges; failed to collect and analyze samples of storm water discharges for pH, total suspended solids, total organic carbon, specific conductance, toxic chemicals, and other pollutants which are likely to be present in storm water discharges in significant quantities, and those parameters listed in Table D of the General Permit as well as those constituents listed in the CFR sections referenced above; and, failed to report the results of required sampling in an Annual Report.

Each and every day from March 30, 2000 to March 30, 2005, Bo Dean Co. has been in violation of the Clean Water Act for: 1) failure to develop and implement a SWPPP; 2) failure to develop and implement Monitoring and Reporting Programs as required by the General Permit and/or Clean Water Act § 402(p); and, 3) discharging pollutants in violation of the non-storm water prohibitions of the General Permit. All these violations are continuing.

River Watch alleges Bo Dean Co. has not implemented BMP by not using BAT or BCT to control or eliminate its storm water discharges. Bo Dean Co. is violating the General Permit by:

- 1) allowing materials other than storm water (non-storm water discharges) that discharge either directly or indirectly to waters of the United States;
- 2) causing or threaten to cause pollution, contamination, or nuisance; exceeding the specified effluent limitations identified above;
- 3) discharging storm water containing a hazardous substance equal to or in excess of a reportable quantity listed in 40 CFR Part 117 and/or 40 CFR Part 302;
- 4) failing to reduce or prevent pollutants associated with industrial activity in storm water discharges and authorized non-storm water discharges through implementation of BAT for toxic and non-conventional pollutants and BCT for conventional pollutants;

5) failing to develop and implement a SWPPP that complies with the requirements in Section A of the General Permit including BMPs that achieve BAT/BCT constitutes compliance with this requirement;

6) discharging storm water and non-storm water to surface or ground water which adversely impact human health or the environment;

7) causing or contributing to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan as discussed above;

8) failing to submit a report to the Regional Water Quality Control Board describing the BMPs currently being implemented and additional BMPs that will be implemented to prevent or reduce any pollutants causing or contributing to the exceedance of water quality standards; and,

9) failure to update its SWPPP and Monitoring and Reporting Program to reflect changes in BMPs, BATs and BCTs.

Visual observation and evidence taken during storm events indicated prohibited amounts of pollutants are discharged from Bo Dean Co. operations. In addition to the observed discharges, pooling of cloudy material can be seen throughout the facilities during and soon after rains. These poolings occur mostly in non-covered areas which allow pollutants to reach groundwaters. Nowhere in any of the documentation submitted by Bo Dean Co. to the Regional Water Quality Control Board can there be seen any recognition of or preventative measure for eliminating these prohibited discharges.

## 2. Storm Water Pollution Prevention Program

The General Permit requires dischargers in operation prior to October 1, 1992, to have developed and implemented a SWPPP no later than that date. If Bo Dean Co. began industrial activities after October 1, 1992, it must develop and implement a SWPPP at the start of operations.

The SWPPP must be designed to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-storm water discharges from Bo Dean Co.'s facilities; and, to identify and implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-storm water discharges. As a result Bo Dean Co.'s facilities directly and indirectly discharge, or threaten to discharge to Green Valley Creek, the Russian River and its tributaries, Santa Rosa Creek, and to the

groundwater. The General Permit details the specific requirements for preparing and implementing a SWPPP.

Information available to River Watch indicates that Bo Dean Co. has not fully developed and/or adequately implemented a SWPPP for its industrial operations at the Sites. In addition, Bo Dean Co. has failed to eliminate non-storm water discharges from its facilities identified in this NOTICE. Bo Dean Co. has been and will continue to be in violation every day it discharges unauthorized non-storm water and every day it discharges storm water containing pollutants without adequately implementing a SWPPP for its facilities.

Bo Dean Co. has inadequately identified and inadequately assessed all potential sources of pollutants and has failed to describe the appropriate BMPs necessary to reduce or prevent these potential pollutants in its SWPPP. One of the major elements of the SWPPP is the elimination of unauthorized non-storm water discharges to the facility's storm drain system. Unauthorized non-storm water discharges at the facilities are generated from a wide variety of pollutant sources. They include waters from the rinsing or washing of vehicles, equipment, buildings, or pavement; materials that have been improperly disposed of or dumped, and spilled; or leaked materials. Unauthorized non-storm water discharges can contribute a significant pollutant load to receiving waters. Measures to control spills, leakage, and dumping must be addressed through BMPs. Bo Dean Co.'s BMP's fail to adequately address the specific sources of pollution found its facilities. Its SWPPP for the facilities do not evaluate all potential pollution conveyances to determine whether they convey unauthorized non-storm water discharges to the storm drain system.

As a result, Bo Dean Co. has been in continuous violation of the monitoring and reporting requirements every day from March 30, 2000 through at least March 30, 2005. Furthermore, Bo Dean Co. will continue to be in violation of the SWPPP requirements every day it discharges non-storm water and storm water containing pollutants without developing and implementing an adequate SWPPP for its facilities.

### 3. Monitoring and Reporting Program

The General Permit requires dischargers in operation prior to October 1, 1992, to have developed and implemented a Monitoring Program no later than that date. Bo Dean Co. began industrial activities after October 1, 1992, and must develop and implement a Monitoring Program at the start of operations.

The Monitoring Program must be designed to ensure that storm water discharges are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving

Water Limitations specified in the General Permit; and, must include visual observations and comprehensive sampling and analysis, and reporting.

Information available to River Watch indicates that Bo Dean Co. has not adequately developed and/or implemented Monitoring Programs at the facilities identified in this NOTICE. It has failed to: 1) perform visual observations of storm water discharges and authorized storm water discharges; 2) collect and analyze samples of storm water discharges for pH, total suspended solids (TSS), total organic carbon (TOC), specific conductance, toxic chemicals, and other pollutants which are likely to be present in storm water discharges in significant quantities, and those parameters listed in Table D of the General Permit as well as those constituents listed in the CFR sections referenced above; and 3) report the results of required sampling in its Annual Report.

As a result, Bo Dean Co. has been in continuous violation of the monitoring and reporting requirements every day from March 30, 2000 through at least March 30, 2005. Furthermore, Bo Dean Co. will continue to be in violation of the monitoring requirements every day it discharges non-storm water and storm water containing pollutants without developing and implementing an adequate Monitoring Program for its facilities.

4. Discharging Without a NPDES Point Source Permit

This NOTICE also address the failure of Bo Dean Co. to obtain a point source NPDES permit for its discharges of pollutants from a point source to waters of the United States. 33 U.S.C § 1362(6) defines the term "pollutant" to mean "dredged spoil, solid waste . . . chemical wastes, biological materials . . . rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." The equipment used by Bo Dean Co. to distribute materials are point sources under the Clean Water Act.

Bo Dean Co.'s rock processing and asphalt manufacturing facilities as identified in this NOTICE are themselves point sources from which pollutants, as defined above, are discharged off the facilities to Green Valley Creek, the Russian River, and Santa Rosa Creek - waters of the United States, in violation of the Clean Water Act § 402 point source discharge permit requirements. Due to their proximity to the Russian River, Santa Rosa Creek, and Green Valley Creek, the facilities discharge, and threaten to discharge, directly and indirectly to surface waters and groundwater and have been since the beginning of operations.

Clean Water Act §§ 301 and 402 prohibit the discharge of any pollutant from a point source to waters of the United States without a NPDES permit. Bo Dean Co. has

Bo Dean Co., Inc.  
Notice of Violations and Intention to File Suite - CWA  
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no NPDES permit allowing it to discharge from a point source to these waters of the United States and is therefore in violation of the Clean Water Act for each day it discharges.

Each and every day from March 30, 2000 to March 30, 2005 that Bo Dean Co. has discharged polluted storm water or nonstorm water into waters of the United States is a violation of the Clean Water Act and these violations are continuing.

### CONTACT INFORMATION

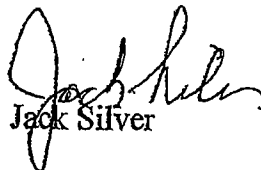
River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and ground water in Northern California. River Watch is organized under the laws of the State of California. Its address is 6741 Sebastopol Avenue, Suite 140, Sebastopol, CA 95472, telephone 707-824-4371. E-mail address - [rwrwatch@yahoo.com](mailto:rwrwatch@yahoo.com). Website is [northerncaliforniariverwatch.org](http://northerncaliforniariverwatch.org).

River Watch has retained legal counsel to represent them in this matter. All communications should be addressed to:

Kimberly Burr, Esquire  
Jack Silver, Esquire  
P.O. Box 5469  
Santa Rosa, CA 95402  
Tel. 707-528-8175  
Fax 707-542-7139

River Watch is willing to work with Bo Dean Co. to bring it into compliance with the Clean Water Act. However, unless our legal counsel is contacted before the expiration of 60-day notice period, River Watch will file suit in federal court to compel compliance.

Very truly yours,

  
Jack Silver

Bo Dean Co., Inc.  
Notice of Violations and Intention to File Suite - CWA  
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cc:

Stephen L. Johnson, Acting Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Mail Code 3213A  
Washington, D.C. 20460

Wayne Nastri, Regional Administrator  
U.S. Environmental Protection Agency Region 9  
75 Hawthorne St.  
San Francisco, CA 94105

Celeste Cantü, Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812-0100

Belinda Soiland, Registered Agent  
Bo Dean Co., Inc.  
1060 Maxwell Drive  
Santa Rosa, CA 95401



# SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also, complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature X [Signature] ☒ Agent ☐ Addressee

B. Received by (Printed Name) [Signature] C. Date of Delivery 3/3/05

D. Is delivery address different from item 1? ☒ Yes ☐ No  
If YES, enter delivery address below:

Article Addressed to:  
200 N Soiland Quarry  
Bo Dean Co. Inc  
1000 Highway 116  
Forestville, CA 95436

6. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ O.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes ☒ No

Article Number 7004 2890 0004 7968 3890  
Transfer from service label

Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

# COMPLETE THIS SECTION ON DELIVERY

Complete items 1, 2, and 3. Also, complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

A. Signature X [Signature] ☒ Agent ☐ Addressee

B. Received by (Printed Name) [Signature] C. Date of Delivery 3/3/05

D. Is delivery address different from item 1? ☒ Yes ☐ No  
If YES, enter delivery address below:

Article Addressed to:  
200 N Soiland Quarry  
Bo Dean Co. Inc  
1000 Highway 116  
Forestville, CA 95436

6. Service Type  
☒ Certified Mail ☐ Express Mail  
☐ Registered ☐ Return Receipt for Merchandise  
☐ Insured Mail ☐ O.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes ☒ No

Article Number 7004 2890 0004 7968 3890  
Transfer from service label

Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

# U.S. Postal Service<sup>TM</sup> CERTIFIED MAIL<sup>TM</sup> RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

OFFICIAL USE  
SANTA ROSA, CA #14

Postage	\$ 40.87
Certified Fee	\$ 2.30
Return Receipt Fee (Endorsement Required)	\$ 1.75
Restricted Delivery Fee (Endorsement Required)	\$ 0.00
Total Postage & Fees	\$ 44.88



Sent To: Bo Dean Co. Products  
Street, Apt. No., or PO Box No. 1000 Maxwell Dr.  
City, State, ZIP+4 Santa Rosa CA 95401

See Reverse for Instructions

# U.S. Postal Service<sup>TM</sup> CERTIFIED MAIL<sup>TM</sup> RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

OFFICIAL USE  
SANTA ROSA, CA #14

Postage	\$ 40.87
Certified Fee	\$ 2.30
Return Receipt Fee (Endorsement Required)	\$ 1.75
Restricted Delivery Fee (Endorsement Required)	\$ 0.00
Total Postage & Fees	\$ 44.88



Sent To: Bo Dean Co. Products  
Street, Apt. No., or PO Box No. 1000 Highway 116  
City, State, ZIP+4 Forestville CA 95436

See Reverse for Instructions

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Law Office of Jack Silver  
Post Office Box 5469  
Santa Rosa, CA 95402-5469



DEPARTMENT OF JUSTICE  
AUG - 1 2005

Alberto Gonzales, U.S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

REGISTERED MAIL



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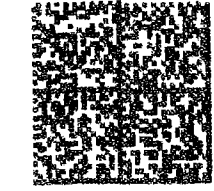
*Return Receipt Requested*

**DOWNEY** | BRAND  
ATTORNEYS LLP

555 Capitol Mall, 10th Floor  
Sacramento, CA 95814

UNITED STATE ATTORNEY GENERAL  
DEPARTMENT OF JUSTICE  
ATTN: CITIZEN SUIT COORDINATOR  
ROOM 216  
WASHINGTON, D.C. 20530

ATTORNEY GENERAL SERVICE  
SEP 28 2005  
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